IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7455 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

KUTCH DISTRICT PANCHAYAT - Petitioner(s)
Versus
DILUBHA CHANUBHA ZALA - Respondent(s)

==========

Appearance :
MR RAJESH M CHAUHAN for Petitioner
MR RC PATHAK for Respondent

==========

CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 31/07/2007

ORAL JUDGMENT

Shri Rajesh M. Chauhan, learned counsel for the petitioner; Shri R.C.Pathak, learned counsel for the respondent.

2. The petitioner, being aggrieved by the award dated 17.7.2000 passed by the Labour Court, Bhuj at Kachchh in Reference [LCB] 112/96 [old Reference [LCR] No. 50/89] is before this Court with a submission that the Labour Court was unjustified in directing reinstatement of the respondent with 70% back wages.

3. The respondent workman came to the Labour Court with a submission that as his removal amounted to illegal retrenchment in violation of the provisions of Section 25F and as provisions of Sections 25G and 25H of the Industrial Disputes Act, 1947 have not been observed, the termination be set aside and the workman be directed to be reinstated.

4. The present petitioner appeared before this Court and submitted that the respondent was engaged in scarcity work which went on from 1982 to July, 1988 and on closure of the work, almost every workman was removed vide common order dated 18th July, 1988. The Labour Court held that the scarcity work came to an end somewhere in the year 1986 and as the workman was continued

even after 1986, his termination would amount to illegal retrenchment.

5. Shri Chauhan, learned counsel for the petitioner submitted that the Labour Court, despite availability of the order passed by this Court in Special Civil Application No.3796/88 annexed with this writ application at Annexure:A could not hold that the respondent workman was entitled to be reinstated. Shri Pathak, learned counsel for the respondent on the other hand submitted that if on strength of the evidence available on the records the Court below has observed that the respondent's removal amounted to illegal retrenchment because scarcity work came to an end in 1986 and workman was continued thereafter, then, this Court should not interfere in the findings.

6. Copy of the Special Civil Application No. 3796/88 has been filed by the petitioner. The said petition was filed by Akhil Kachchh Achhat Workcharge Karmachari Mandal, through its Secretary Shri D.S. Dholakia. Along with the said petition, list of almost about 200 persons

was filed before this High Court. Name of the respondent finds place at sr. no. 25. In the said matter, the said petitioner firstly prayed that the respondent-Executive Engineer be restrained from terminating their services, this Court granted interim order but later on vacated the same on 23rd December, 1988. On 30th August, 1988, President of the Association filed an affidavit before the High Court that the services of the concerned workmen were terminated by orders dated 18th July, 1988. This Court, in the said petition observed as under:-

> *"The Division Bench of this Court in the matter of J.J. Shrimali Vs. District Development Officer, Mehsana [1989] [1] GLR 396 has taken a view that the the scarcity relief work is a sovereign function of the State and cannot be said to be an 'industry' within the meaning of Section 2[j] of the Industrial Disputes Act, 1947. It is further held that the persons appointed on scarcity relief work have no right to employment and their services can be terminated in accordance with the terms of appointment. The said view has been approved by the Full*

Bench of this Court in the matter of H.K. Makwana vs. State of Gujarat and others [1994 [2] GLR 1002].

In view of the above settled law, the claim of the petitioner Association for continuance of the service of its members even after the completion of scarcity relief work or of employment on some other Project is not sustainable."

7. From the judgment of this Court, it would appear that the Court was of the opinion that the present petitioner was not an 'industry' and that a person employed in the scarcity project would have no right to hold the post. A person appointed under the scarcity project would stand removed on closure of the project. The Court very specifically observed that the claim of the petitioner Association for continuance of the service of its members, even after completion of the scarcity relief work or for employment of some other project would not be sustainable. The said findings recorded by this Court would stare in the eyes of all concerned. In any case, it would not allow the learned Labour Judge to sit over the judgment of the High Court and hold

that the scarcity work came to an end in the year 1986 and present respondent was continued even after the project was over.

8. I must record my displeasure against the concerned Labour Judge, who being alive to the judgment of this Court simply referred to it but did not try to understand the effect and impact of the said judgment. If the said Judge continues to be in the services, then, copy of this judgment be kept in his personal dossier so that it is taken into consideration as and when required.

9. In view of the judgment of this Court in Special Civil Application No. 3796/88, the respondent workman was not entitled to make reference to the Labour Court and the Labour Court was absolutely unjustified in granting Reference in favour of the workman. The award made by the learned Labour Court deserves to and is accordingly quashed. Rule is made absolute accordingly. No costs.

[R.S. GARG, J.]

pirzada/-